IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL APPEAL NO. 32 OF 2001.

M/s. Kayji Real Estate (P)
Ltd., having its Regd.
Office at Anand Bhavan,
Station Road, Margao, rep.
by its Attorney Shri
Brahman Palli Gururaj Rao,
r/at House No. FF-1, Duplex,
Building No. 7, Antonieta
Apts., Borda, Margao. ... Appellant.

Versus

Mrs. Deepa Prakash Ramchandani
A-1/3, Yashodhan, Near Babu
Naik's Residence, Aquem,
Margao. ... Respondent.

Mr. S.R. Rivonkar, Advocate for the Appellant.

Mr. N.N. Sardessai, Advocate for the Respondent.

Coram: P.V. HARDAS, J.

Date: 13th February 2003.

ORAL JUDGMENT.

The appellant/complainant, being aggrieved by the Order passed by the Judicial Magistrate, First Class, Margao, by Judgment dated 19th March 2001, in Criminal Case No. 37/N/99/E, acquitting the respondent/accused for an offence punishable under Section 138 of the Negotiable Instruments Act, has filed the present appeal.

2. The facts necessary for the decision of the Appeal are set out hereunder:-

The appellant/complainant is a private limited

company dealing in real estate business, having its office at Margao. The respondent/accused had booked a shop No. C-14, situated on the ground floor of the 'C' Block in the building 'Radha Enclave', constructed by the appellant/complainant. The respondent/accused had also agreed to purchase two other shops, namely, C-114 and C-115 in the same building and a cheque bearing No. 0718974, dated 1st July 1998, drawn on the Bank of India, Margao, was issued by the respondent/accused as earnest money. The said cheque was presented and was returned with an endorsement 'insufficient funds'. The appellant/complainant, thereafter, issued a notice, dated 22nd December 1998, which is at Exhibit P-5. The cheque is at Exhibit P-2 and the Memo accompanying the dishonoured cheque is at Exhibit P-4. The respondent/accused had sent a reply to the notice and the reply is at Exhibit P-6. The agreement in respect of the purchase of the shop C-14 is at Exhibit P-7.

3. The learned Judicial Magistrate, First Class explained the substance of accusation, vide Exhibit 11. The appellant/complainant examined one of its partners in support of its case. The learned trial Court, after considering the evidence on record, acquitted the respondent/accused.

4. P.W.1 Santosh Joshi, in his evidence, states

regarding the issuance of the cheque and, further, states that the accused had issued a letter, dated 11th May 1998, which is at Exhibit P.W.1/C. By virtue of the said letter, the accused had issued the cheque as earnest money for the purchase of the two shops C-114 and C-115. In the said letter, the accused had also stated that in case of her failure to purchase the said two shops, the amount of Rs. 50,000/- shall be adjusted by the appellant/complainant as additional purchase price of shop C-14. However, in the said letter at Exhibit P.W.1/C, the number '1' is scored out to read C-14. The case of the appellant/complainant is that the respondent/accused had been given 'discount' of Rs. 50,000/- in the purchase price of the shop C-14 as the respondent/accused had evinced her desire to purchase two additional shops. In the cross-examination, P.W.1 admitted that the Agreement, dated 8th May 1998, (in respect of purchase of shop C-14), was not complete in all respects. He admitted that there is a mention of only rupees six lakhs in respect of shop C-14. He has further admitted that the appellant/complainant had received the full agreed amount of Rs. 6 lakhs in respect of Shop C-14 under the Agreement Exhibit P.W.1/B.

5. The appellant/complainant also examined B. Gururaj Rao as P.W.2, who has signed the complaint. He

states that he was working as General Manager and Power of Attorney of the company at the relevant time. He has no personal knowledge in respect of the transaction.

6. The defence of the respondent/accused in her Statement under Section 313 of Code of Criminal Procedure is as follows:-

> "...Talks were to the effect that consideration for C-114 and 115 was Rs. 4,50,000/-. In the event of my not purchasing both the said shops, purchase price for one shop was fixed at Rs. 2,75,000/- and the aforesaid sum of Rs. 50,000/- should be adjusted for the said shop (C-114). These were only talks and no agreement has been entered into in that regard."

7. The learned trial Judge took into consideration that there was no liability in respect of shop C-14 as P.W.1 had admitted that the entire price had been paid by the respondent/accused. The learned Judge also adverted to the fact that there was no agreement in respect of shop C-114 and/or C-115. The learned Judge also took into consideration that the price itself had not been fixed under an enforceable agreement. The learned Judge also took into consideration the reason for the breakdown of talks regarding purchase of two shops C-114 and C-115 as can be discerned from the letter of the respondent/accused, dated 14th November 1998, which is at Exhibit P.W.1/H. In the said letter the respondent/accused had expressed

her disinclination to purchase the two shops C-114 and C-115. The learned Judge observed that, in respect of P.W.1/C, there was an uninitialled erasure of '1' in C-114. In a curious twist of events, the respondent/accused had moved an application under Exhibit 16 seeking clarification regarding obliteration of '1' appearing in C-114. On the said application, the counsel for the appellant/complainant had made an endorsement on the reverse admitting that the figure be read as '114' and not as '14'. The learned trial Court, therefore, held that the purchase price of Rs. 50,000/-, which was paid by the cheque in dispute was not towards C-14 but towards C-114. This is in complete consonance with the defence set up by the respondent/accused in her Statement under Section 313 of the Code of Criminal Procedure.

8. Mr. Rivonkar, learned counsel appearing on behalf of the appellant/complainant, has stated that the learned trial Court was in error in not drawing a presumption under Section 139 of the Negotiable Instruments Act. This statement is factually incorrect, as by virtue of the admission in the cross-examination of the appellant/complainant and the defence raised by the respondent/accused, which is borne out by the evidence on record, the presumption stood rebutted. Anyway, this is an appeal against acquittal. The view

taken by the trial Court does not appear to be a perverse view not based on the evidence on record. This being the position, I am not inclined to interfere with the Order of acquittal as passed by the learned trial Court.

9. The Appeal against acquittal is devoid of any merit and the same is dismissed with no order as to costs.

(P.V. HARDAS)
JUDGE.

ed's.